

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 19783 through CA MC 19786, CA MC 38279 through CA MC 38282.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claims -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to December 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely, for any reason, the statutory consequence must be borne by the claimant.

APPEARANCES: Elton P. Mascari, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Elton P. Mascari appeals the California State Office, Bureau of Land Management (BLM), dated August 16, 1982, which declared the unpatented Hopeful #1 through #4 lode mining claims, CA MC 19783 through CA MC 19786, CA MC 38279 through CA MC 38282, abandoned and void because the affidavit of annual assessment work for 1981 was received January 4, 1982, and this did not satisfy the requirements of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

Appellant states that he mailed the affidavit of annual assessment work on December 30, 1981, and that most Government agencies accept the postmark for the date of filing.

[1] Section 314 of FLPMA requires that evidence of annual assessment work be filed both in the county where the location is recorded and in the proper office of BLM prior to December 31 of each calendar year, under the penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed both in the county and with BLM.

Despite appellant's statement that the affidavit was timely mailed, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 3833.1-2(a). Thus, even if the affidavit were timely mailed and an error by the Postal Service prevented it from being delivered to the BLM office timely, that fact does not excuse appellant's failure to comply with the statutory requirements. Edna L. Patterson, 64 IBLA 316 (1982); Regina McMahon, 56 IBLA 372 (1981); Glenn D. Graham, 55 IBLA 39 (1981). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of the filings. Regina McMahon, *supra*. Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f).

This Board has no authority to excuse lack of compliance with the statute or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Will A. Irwin
Administrative Judge